

STATE OF MICHIGAN
COURT OF APPEALS

JAMES D. AZZAR and PROCESSING
SOLUTIONS LIMITED,

Plaintiffs-Appellants,

v

CITY OF GRAND RAPIDS,

Defendant-Appellee,

and

BERNARD C. SCHAEFFER and ROBERT J.
KRUIS,

Defendants.

UNPUBLISHED
September 22, 2005

No. 260438
Kent Circuit Court
LC No. 03-011760-NZ

Before: Cooper, P.J., and Fort Hood and R.S. Gribbs*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a stipulated judgment entered in favor of defendant, the City of Grand Rapids, following the court's denial of plaintiffs' motion for partial summary disposition with regard to the validity of defendant's building maintenance code (BMC). We affirm.

We review issues of statutory construction de novo. *Sotelo v Grant Twp*, 470 Mich 95, 100; 680 NW2d 381 (2004). A trial court's decision regarding a motion for summary disposition is also reviewed de novo. *Id.* at 101. Although the trial court did not state under which subrule of MCR 2.116(C) it considered plaintiffs' motion, it is apparent that the court considered proofs beyond the pleadings and, therefore, MCR 2.116(C)(10) is the appropriate subrule to apply. *Spiek v Dep't of Transportation*, 456 Mich 331, 338; 572 NW2d 201 (1998). Based on MCR 2.116(C)(10), summary disposition may be granted if the proffered evidence does not establish a genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163-164; 645 NW2d 643 (2002). If it appears to the court that the nonmoving party is entitled to judgment, the court may render judgment in favor of the nonmoving party. MCR 2.116(I)(2).

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

With regard to plaintiffs' claim that the BMC was invalid when it was enacted in 1987, we note that the trial court did not address this specific issue. Because an appellant should not be punished for a trial court's failure to rule on an issue that was properly raised in the trial court, *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994), we will consider the merits of plaintiffs' claim.

Plaintiffs' substantive argument confuses defendant's power to enact ordinances and codify them in the BMC from the preemption of an ordinance by state law. Defendant, as a home rule city, has broad constitutional powers to enact ordinances for the benefit of municipal concerns. Const 1963, art 7; §22; *Rental Property Owners Ass'n v Grand Rapids*, 455 Mich 246, 253; 566 NW2d 514 (1997). A home city's authority to enact and enforce ordinances is further defined in the Home Rule City Act, MCL 117.1 *et seq.* *Id.* at 254. Promotion of the public health, safety, and welfare are valid goals of a home city's ordinances. *Rental Property Owners Ass'n*, *supra* at 254-255; MCL 117.3(j).

By contrast, preemption by state law is concerned with 1) whether "the statute completely occupies the field that the ordinance attempts to regulate, or 2) the ordinance directly conflicts with a state statute." *Rental Property Owners Ass'n*, *supra* at 257. The latter means of preemption occurs when the ordinance permits what the statute prohibits, or vice versa. *People v Llewellyn*, 401 Mich 314, 322 n 4; 257 NW2d 902 (1977). The following *Llewellyn* guidelines apply with respect to the former means of preemption:

(1) when state law expressly provides that the state's authority is exclusive; (2) when preemption is implied in legislative history; (3) although generally not sufficient by itself, when the pervasiveness of the state regulatory scheme supports such a finding; and, (4) when the nature of the regulated subject matter demands exclusive state control to achieve the uniformity necessary to serve the purpose or interest of the state. [*Van Buren Charter Twp v Garter Belt, Inc.*, 258 Mich App 594, 605; 673 NW2d 111 (2003).]

Because plaintiffs do not present any basis for concluding that the BMC was enacted contrary to the requirements of the Home Rule City Act, we treat plaintiffs' substantive argument as presenting only a question of preemption by state law. Cf. *Michigan Coalition for Responsible Gun Owners v Ferndale*, 256 Mich App 401, 413; 662 NW2d 864 (2003) (city ordinance prohibiting weapons possession in city building would be lawful exercise of city's power to enact an ordinance if not preempted by state law). Additionally, because plaintiffs specifically argue only a claim of express preemption, we treat plaintiffs' argument as falling within the first of the *Llewellyn* guidelines, that being whether a statute completely occupies the field that the ordinance attempts to regulate. *Van Buren Charter Twp*, *supra* at 605.

We conclude that plaintiffs have not established that the BMC, as enacted in 1987, was expressly preempted by the Stille-DeRossett-Hale Single State Construction Code Act (formerly the State Construction Code Act), MCL 125.1501 *et seq.* (hereafter the "Construction Act"). We reject plaintiffs' claim that MCL 125.1504 and MCL 125.1508 expressly preempted or prohibited defendant from enacting property maintenance ordinances.

MCL 125.1504, as amended by 1980 PA 371, established standards for the state construction code, which was to be promulgated by the state construction code commission (now

the director of the department of consumer and industry services, or an authorized representative). MCL 125.1508, as amended by 1980 PA 371, established standards for applying the state construction code throughout the state, subject to a governmental subdivision's exemption rights. Neither statutory provision contains an express statement of preemption regarding property maintenance or any other area that the state construction code was intended to address. A court may not read into a statute what is not within the Legislature's intent, as derived from the statutory language. *AFSCME v Detroit*, 468 Mich 388, 400; 662 NW2d 695 (2003). Hence, we find no express preemption as a matter of law.

We note in passing that statutory language cannot be read in a vacuum. *Shinholster v Annapolis Hosp*, 471 Mich 540, 549; 685 NW2d 275 (2004). The words and phrases must be read in the context of the entire act, and assigned a meaning in harmony with the statute as a whole. *Id.* "When the Legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction." *Veenstra, supra* at 160. We conclude that MCL 125.1524 plainly established the proper standards for determining the validity of an ordinance. As amended by 1980 PA 371, MCL 125.1524 provided for "construction regulations" to be repealed and rendered invalid after the promulgation of the state construction code, except as provided in MCL 125.1508. The word "construction regulation" was defined in MCL 125.1502(1)(m) [now MCL 125.1502a(1)(m)] as including an ordinance or code adopted by a city, "relating to the design, construction, or use of buildings and structures and the installation of equipment in the building or structure."

Hence, the relevant inquiry is whether particular ordinance provisions in the BMC were invalid "construction regulations" within the meaning of MCL 125.1524. Because plaintiffs do not argue that any particular ordinance provision in the BMC was invalid under MCL 125.1524, but rather only challenge the validity of the BMC as an unlawful enactment in its entirety, we deem any issue in this regard abandoned and decline to address it. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Limiting our review to plaintiffs' claim that the BMC, as enacted in 1987, was expressly preempted by the Construction Act, MCL 125.1504 and MCL 125.1508, we hold that the plain language of these statutory provisions does not support plaintiffs' claim.

We similarly reject plaintiffs' claim that the BMC was preempted pursuant to certain statutory amendments to the Construction Act in effect on July 31, 2001. Neither MCL 125.1504, as amended by 1999 PA 245 to specify particular model codes to be made part of the state construction code, nor MCL 125.1508a, as added by 1999 PA 245 to apply the state construction code without exemption, contains a statement of express preemption.

Further, we are not persuaded that the other *Llewellyn* guidelines supports a conclusion that the Construction Act completely occupies the field of property maintenance regulations. *Rental Property Owners Ass'n, supra* at 257; *Van Buren Charter Twp, supra* at 605. Although we agree that the legislative history is not a useful guideline, we are nonetheless left without any legislative history implying that the Legislature intended the Construction Act to totally preempt ordinances in the area of property maintenance. *Van Buren Charter Twp, supra* at 605.

Also, the regulatory scheme is not so persuasive to support a finding of total preemption. The international property maintenance code (IPMC) is material to the state construction code because it was incorporated to the prescribed extent of its reference in the international building

code, and was made part of the Michigan Building Code pursuant to 2001 AACCS, R 408.30401 *et seq.* But because the international building code, § 102.2 (2000 edition), itself expressly contemplates that it does not nullify any local law, the third *Llewellyn* guideline does not support total preemption. *Taylor v Detroit Edison Co*, 263 Mich App 551, 562; 689 NW2d 482 (2004).

Finally, we are not persuaded that the regulated subject matter demands exclusive state control. *Van Buren Charter Twp, supra* at 605. Although the Construction Act has consistently provided for a code to “insure adequate maintenance of buildings and structures,” MCL 125.1504(3)(e), “[p]arallel subject matter simply does not require a finding of preemption.” *Rental Property Owners Ass’n, supra* at 261.

After considering all the *Llewellyn* guidelines, we conclude that the Construction Act, as amended by 1999 PA 245, was not intended to occupy the field of property maintenance to the exclusion of any local regulation. Rather, as indicated earlier, the Legislature addressed which construction regulations were repealed and rendered invalid in MCL 125.1524, a provision left unchanged by 1999 PA 245. Because the question of the applicability of MCL 125.1524 to particular ordinance provisions of the BMC is not before us, we express no opinion regarding this issue. Limiting our review to the specific argument raised by plaintiffs regarding the validity of the BMC in its entirety, we find no basis for disturbing the trial court’s decision denying plaintiffs’ motion for partial summary disposition or entry of the stipulated judgment in favor of defendant.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs

I concur in result only.

/s/ Jessica R. Cooper